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Supreme Court of the United States

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October Term, 1953

No. 597 54

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EVELYN RICE,

Petitioner,

vs.

SIOUX CITY MEMORIAL PARK CEMETERY, INCORPORATED, A Corporation; F. K. LYTLE, and J. M. GUNNELL

—o—

PETITION FOR WRIT OF CERTIORRI TO THE SUPREME COURT OF THE STATE OF IOWA

—o—

NEIL R. MCCLUHAN,
LOWELL C. KINDIG,
Counsel for Petitioner.
KINDIG & BEEBE,
Of Counsel.

COCKLE PRINTING CO., LAW BRIEFS, OMAHA

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MAY IT PLEASE THE COURT:

Petitioner, feeling aggrieved by the final order and decision of the Supreme Court of Iowa in the case entitled, "Rice v. Sioux City Memorial Park Cemetery," in its decision reported in 60 N. W. 2d 110 and filed September 22, 1953, and its final decision and order overruling peti-

tioner's petition for a rehearing, which final order was entered on November 20, 1953, petitions this Court for a writ of certiorari to the end that the cause may be reviewed and determined by this Court as provided for by the statutes of the United States, and that the judgment of said Supreme Court of Iowa be reversed by this Court, and for such further relief as to this Court may seem proper.

SUMMARY AND SHORT STATEMENT OF MATTER INVOLVED

Sergeant John Rice, an American Indian, was killed in the service of his country in Korea. When his body was returned to the United States, his widow, the petitioner herein, purchased a burial lot in the Sioux City Memorial Park Cemetery and made funeral arrangements. The grave was opened and funeral services were held in the family church at Winnebago, Nebraska. The corpse, together with the family and friends of the decedent, then proceeded to the burial ground and the casket was placed over the open grave. Graveside services were then held, whereupon this petitioner, other members of the family and friends, left the cemetery and returned to Winnebago. Shortly upon her return home, the petitioner was notified that the cemetery refused to lower the body into the grave because Sergeant Rice was an American Indian and therefore not a member of the Caucasian Race.

Petitioner had signed a contract for the purchase of the cemetery lot in which a paragraph was included re-

stricting burial privileges to members of the Caucasian Race.

International publicity resulted from this incident and shortly thereafter President Truman invited the petitioner to have the body buried at government expense in the Arlington National Cemetery in Washington, which offer was accepted, and, after a great deal more publicity, the services were held and the body buried in Arlington National Cemetery.

A considerable time after this experience, petitioner brought suit against the cemetery and its individual officers in the District Court of Iowa, in and for Woodbury County, claiming damages for humiliation and mental suffering in the sum of $60,000.00 in each of three separate Counts. The cemetery, by answer, claimed its conduct was justified by reason of the restrictive clause in the contract, and petitioner denied that the cemetery could use that clause as a defense.

The cemetery petitioned for removal of the case to the United States District Court for the Northern District of Iowa, and, after hearing, that Court remanded the case to the State Court, and the opinion is recorded at 102 Federal Supplement 658.

Thereupon each side filed an application for the adjudication of law points in advance of trial, and the Trial Court ruled on these points adversely to the petitioner, from which ruling, together with a supplemental ruling on the remaining law points, the petitioner appealed to the Supreme Court of Iowa, and that Court, being the Court of last resort in the State of Iowa, sustained the

Trial Court in all respects. Petitioner then filed her petition for a rehearing, which petition was denied on November 20, 1953.

Throughout the entire proceedings petitioner has properly pleaded and urged that for the Iowa Courts by their rulings to allow the cemetery to hide behind the restrictive covenant in the contract is an act by the State which is in violation of both the equal protection and the due process clauses of the Fourteenth Amendment to the United States Constitution; the letter and spirit of the United Nations Charter; and the public policy of the United States Government.

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STATEMENT AS TO JURISDICTION OF THE UNITED STATES SUPREME COURT ON THE WRIT OF CERTIORARI TO REVIEW THE JUDGMENT OR DECREE IN QUESTION

(a) This is a petition for a writ of certiorari brought under the provisions under 62 Statutes 929, 28 U. S. C. A., Section 1257(3), in a case where right, title, privilege. or immunity are claimed under the United States Constitution and under a treaty of the United States Government.

(b) The constitutional provisions, involving both the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution, have been pleaded and are directly involved, and the United Nations Charter as a treaty of the United States Government likewise has been pleaded and is directly involved in this litigation, and both were directly passed upon ad-

versely to this petitioner by the District and the Supreme Courts of Iowa.

In Count I of the original petition there was a direct reference to the acts of the cemetery being in violation of the Fourteenth Amendment (R. p. 8, ll. 15-19); the same proposition was raised in Count II of the original petition (R. p. 9, ll. 29-34; p. 10, ll. 1-3); subsequently, in the first amendment to her petition, she specifically alleged, "Should a State Court condone the defendants' conduct, it would violate the Fourteenth Amendment to the Constitution of the United States." (R. p. 24, ll. 6-9.) And the same amendment was made to Count II of the original petition (R. p. 24, ll. 14-34); a second amendment was thereupon filed raising the problem of public policy of the United States and the United Nations Charter (R. p. 27, ll. 14-30). To the petition as thus twice amended, the cemetery answered by denying the above allegations and sought to dismiss the action (R. p. 25, ll. 25-34; p. 26, ll. 1-34; p. 27, l. 1; p. 28, ll. 1-20).

Thereupon the constitutional and treaty provisions were more directly raised by the petitioner and by the cemetery by application for adjudication of law points prior to trial (R. p. 30, ll. 1-12; ll. 29-34; p. 31, ll. 1-7; ll. 23-34; p. 32, ll. 17-29). Thereupon the Trial Court directly ruled contrary to the petitioner's assertions (R. p. 33, l. 12 to p. 36, l. 21).

Thereafter an application was made for adjudication of the remaining law points not here involved, and the ruling was adverse to the petitioner. Whereupon she appealed to the Supreme Court of Iowa.

In the appeal to the Supreme Court of Iowa the appellant's brief, under Assignment of Error No. 4 on page 6 thereof, raised the question of whether the restrictive covenant could be relied upon as a defense because:

(a) Such action by the Court violated the Fourteenth Amendment to the United States Constitution.

(b) Such action by the Court violated the public policy of the United States, and

(c) Such action by the Court violated the United Nations Charter.

And in Assignment of Errors Nos. 5 and 6 on page 7 of said appellant's brief, the questions of public policy and the United Nations Charter were specifically raised.*

This case was orally argued, and under date of September 22, 1953 the Supreme Court of Iowa filed its written opinion reported in 60 N. W. 2d 110 and found in the printed Record on pages 63 to 77, inclusive. The Iowa Court directly discusses and passes upon the Constitutional, the public policy, and the United Nations Charter questions, and the decision was in all respects adverse to this petitioner (R. p. 68 to 73, incl.).

Whereupon this petitioner filed her petition for a rehearing, which is set out in its entirety in pages 80 to 95 of the printed Record, and in said petition for rehearing she specifically challenged the following rulings of the Court:

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* We have been unable to supply the Court with ten copies of the complete set of the briefs and arguments filed by both parties in the Iowa Supreme Court, but we have filed with the Clerk ten copies of the Appellant's Brief, together with one complete set showing the appellee's resisting brief, and the appellant's reply brief filed in the Supreme Court of Iowa, and the Court will observe that the constitutional, public policy, and treaty points were directly and substantially raised throughout the proceedings.

1. That allowing the cemetery to use the restrictive covenant as a defense did not amount to State action prohibited by the equal protection clause of the Fourteenth Amendment.

2. That the ruling of the Court did not violate the due process clause of the Fourteenth Amendment and that the Iowa Supreme Court did not directly pass upon the due process question as raised by the petitioner.

3. That the United Nations Charter does not prevent the Courts of the State of Iowa from allowing the cemetery to defend this action for damages by the use of the restrictive covenant, and

4. By holding that the ruling allowing the cemetery to defend by use of the restrictive covenant did not amount to a violation of the public policy of the United States (R. pages 80 and 81).

To this petition for a rehearing the cemetery filed its resistance (R. p. 96 to 104, incl.) and directed its resistance to the foregoing propositions.

Thereafter, under date of November 20, 1953, this petition for a rehearing which had been orally argued was denied (R. p. 105).

It can thus be seen from the original petition, as amended, and the answer thereto, and from the request for and ruling upon an adjudication of law points properly raised, and from the errors relied upon for reversal in the appeal to the Iowa Supreme Court, the Federal questions have been consistently and properly raised at all stages in the proceeding and directly passed upon.

If the cemetery can successfully use the restrictive covenant as a defense to this damage action, then the

petitioner has no cause of action, and the question of whether that defense may be raised and condoned or approved by ruling of the Courts of the State of Iowa can be resolved only by an interpretation of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution by reference to the statutes, the Constitution, and the Federal Court decisions to determine the public policy of the United States Government, and finally by an interpretation of the effect which the United Nations Charter has upon the Courts of Iowa in an action of this kind.

The Federal questions are not only substantial and directly and necessarily involved in the determination herein sought to be reviewed, but they are also of great public importance.

THE QUESTIONS PRESENTED ARE WHETHER THE DISTRICT AND SUPREME COURTS OF IOWA ERRONEOUSLY RULED THAT THE CEMETERY CAN USE THE RESTRICTIVE COVENANT AS A DEFENSE TO THIS DAMAGE ACTION WITHOUT SUCH RULING BECOMING A STATE ACTION IN VIOLATION OF

(1) The due process clause of the Fourteenth Amendment to the United States Constitution.

(2) The equal protection clause of the Fourteenth Amendment to the United States Constitution.

(3) The Preamble and Chapter 1 (Article 3), Chapter 4, Article 13-b, and Chapter 9, Articles 55 and 56 of the United Nations Charter.

(4) The public policy of the United tates Government.

The District and Supreme Courts of Iowa have directly ruled negatively on all four of the above propositions.

THE REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

We believe that the writ should be allowed because:

(1) A direct ruling on the application of the Fourteenth Amendment to the United States Constitution has been made by the District and Supreme Courts of Iowa.

(2) A direct ruling on rights arising under the United Nations Charter, which is a treaty of the United States Government, has been made by the District and Supreme Courts of Iowa.

(3) A direct ruling on and interpretation of the public policy of the United States Government, has been made by the District and Supreme Courts of Iowa.

(4) In each of the above three instances the ruling has been adverse to the rights of this petitioner and contrary to principles established by this Court in somewhat similar cases.

(5) The precise question of whether a restrictive covenant may be successfully raised as a defense to a damage action has never before been determined by this Court, and the decision by the Iowa Courts is contrary

to the established principles and decisions and is a federal question of considerable substance and great public importance.

Respectfully submitted,

NEIL R. MCCLUHAN,

Winnebago, Nebraska,

LOWELL C. KINDIG,

503 Toy National Bank Building
Sioux City 1, Iowa,

Counsel for Petitioner.

KINDIG & BEEBE.

Of Counsel.